LE COPY

Supreme Court, U.S.
FILED
APR 24 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1960

No. 326

LEWIS LLOYD ANDERSON,

Petitioner,

—v.—

STATE OF ALABAMA,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF ALABAMA

PETITIONER'S REPLY BRIEF

ORZELL BILLINGSLEY, JR.
PETER A. HALL
1630 Fourth Avenue, North
Birmingham, Alabama

FRED D. GRAY
34 North Perry Street
Montgomery, Alabama

THURGOOD MARSHALL
JACK GREENBERG
DERRICK BELL, JR.
10 Columbus Circle
New York 19, New York

Attorneys for Petitioner

INDEX

PAGE

Argument 1

CITATIONS

Cases:

Cassell v. Texas, 339 U.S. 282 2

Fikes v. State, 263 Ala. 89, 81 So. 2d 303 (rev'd, 352 U.S. 191) 1

Hernandez v. Texas, 347 U.S. 475 2

Hill v. Texas, 316 U.S. 400 2

Reece v. Georgia, 350 U.S. 85 2

Other Authorities:

1950 U.S. Census of Population, Vol. II—"Characteristics of the Population, Part 2, Alabama" 3

IN THE

Supreme Court of the United States

October Term, 1960

No. 326

LEWIS LLOYD ANDERSON,

Petitioner,

—v.—

STATE OF ALABAMA,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF ALABAMA

PETITIONER'S REPLY BRIEF

Argument

Faced with a record which demonstrates that no Negro has ever served on a petit jury in the history of Dallas County, and that in all recorded history there has been only one Negro who, on one occasion, served on a grand jury, the State offers two defenses: (1) approximately one in twelve persons on the venire is a Negro; (2) approximately 85 percent of the persons convicted of crime in Dallas County are Negroes.

Concerning the first argument, it is noteworthy that more than half of the adult population of Dallas County is Negro. Following a finding of racial discrimination in 1953 because "probably they [Negroes] had been systematically left off rolls on account of race," *Fikes* v. *State,*

263 Ala. 89, 81 So. 2d 303, 309 (reversed on grounds of coerced confession, 352 U.S. 191), a new jury box was made up. The new box then contained 250 to 300 Negroes out of a total of 1500 names, approximately one in five, *Ibid.* Between 1953 and 1959, when the venire in this case was drawn, this proportion decreased to one in twelve (R. 34). Of the two (R. 47) to seven (R. 14) chosen for each venire, a number of Negroes are not found or have excuses (R. 14). In this case five Negroes were called and three were excused (R. 14-15). And, in this case also, no Negro was selected for the grand jury, and the two remaining Negroes were apparently both struck by the state from the petit jury (R. 62).

Proportional representation in jury selection is, of course, unconstitutional. *Cassell* v. *Texas,* 339 U.S. 282. But the vast disproportion revealed by the record, and the fact that only in 1954 was a Negro actually selected for the grand jury (R. 46), raises a presumption of discrimination which the state is obliged to dispel. *Reece* v. *Georgia,* 350 U.S. 85; *Hernandez* v. *Texas,* 347 U.S. 475. This it has not done.

In fact, the characteristics of the Negro and white populations of Dallas County, while reflecting the well-known depressed status of Negroes in areas like those where the instant case arose, does not reveal any differential which suggests that twelve times (or even more) as many whites are qualified to be called for jury service as Negroes. The majority of the county's population is colored. In this light certain 1950 census figures (the latest available) which, while they present but a gross picture, are illuminating. See *Hill* v. *Texas,* 316 U.S. 400.

For persons over twenty-five years of age the median education for all males in Dallas County is 6.5 years, that

for all females is 7.4 years.[1] The median school years completed for non-whites is 4.7;[2] 4,040 Negroes above the age 25 or over have had more than seven grades of school;[3] 9,230 whites age 25 or over have had seven years of school.[4] For persons over 21 (the age of eligibility for jury service, 30 Code of Ala. §21), the number would be even larger. Education, however, is no exclusive criterion for jury service in Alabama. By specific statutory provision even illiterates may serve on Alabama juries, Title 30, Code of Alabama, §21. Indeed, there are not enough college graduates in the County, Negro and white, male and female, to make up even the 1,800 names on the jury roll. Moreover, to the extent that there are persons with higher education there is the likelihood that they belong to the exempt professions.

In terms of employment there is hardly any justification for the tremendous twelve to one disparity on the jury roll. 2,824 Negroes are farmers or farm managers[5] out of 3,297 for the County as a whole.[6] 447 Negroes are craftsmen and foremen[7] as are 1011 white persons.[8] Significantly, even a cursory examination of the venire in this case (R. 24, 26)

---

[1] These figures are derived from 1950 U.S. Census of Population, Volume II—"Characteristics of the Population, Part 2, Alabama." Table 42 (p. 2-86) (males and females 25 years old and older).

[2] *Id.* at Table 44 (p. 2-99).

[3] Derived from *Ibid.*

[4] Derived from Table 42, *op. cit. supra.* To arrive at totals for whites, non-white totals found in Table 44 were deducted from the general totals.

[5] *Id.* at Table 44.

[6] *Id.* at Table 43 (p. 2-91).

[7] *Id.* at Table 44.

[8] Derived from Tables 43 and 44.

indicates that the predominant number of veniremen were farmers, a livelihood in which Negroes are well represented.

There is, therefore, in the general characteristics of the population, no reason why whites outnumber Negroes by so vast a proportion on the jury rolls and why the ratio has been growing. The state's only explanation is that about 85 percent of those convicted of crime in the county are Negroes. This statistic, however, is utterly without meaning for it does not at all indicate what proportion of the Negro population has been convicted of crime. It is absolutely consistent with this statistic that only a minute proportion of the Negroes in Dallas County have ever been guilty of any wrongdoing. Besides, this 85 percent figure includes about 15 to 20 percent traffic offenses (R. 80), other petit crimes (R. 81) and about 25 percent "repeaters" (R. 57) or persons arrested more than once.

In addition there is no explanation of why of the limited number chosen perhaps half are not found or excused. Nor has it been explained why even of these only a solitary grand juror has survived in six years.

It is, therefore, respectfully submitted that the state has not met its burden.

Wherefore, for the foregoing reasons, it is respectfully submitted that the judgment below should be reversed.

Respectfully submitted,

ORZELL BILLINGSLEY, JR.
PETER A. HALL
1630 Fourth Avenue, North
Birmingham, Alabama

FRED D. GRAY
34 North Perry Street
Montgomery, Alabama

THURGOOD MARSHALL
JACK GREENBERG
DERRICK BELL, JR.
10 Columbus Circle
New York 19, New York

Attorneys for Petitioner

SUPREME COURT OF THE UNITED STATES

No. 326.—October Term, 1960.

Lewis Lloyd Anderson, Petitioner, *v.* Alabama.	On Writ of Certiorari to the Court of Appeals of Alabama.

[May 1, 1961.]

Per Curiam.

The judgment is reversed. *Pierre* v. *Louisiana*, 306 U. S. 354; *Cassell* v. *Texas*, 339 U. S. 282; *Hernandez* v. *Texas*, 347 U. S. 475.